

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

BENIHANA OF TOKYO, INC.

Plaintiff,

vs.

BENIHANA, INC.

and

NOODLE TIME, INC.,

Defendants.

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)  
)  
) Civil Action No. 10-1051-SLR  
)  
)  
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)  
)

**STIPULATION OF DISMISSAL WITH PREJUDICE**


The parties to this case, Plaintiff/Counter-Defendant Benihana of Tokyo, Inc. (“BOT”) and Defendants/Counter-Plaintiffs Benihana, Inc. and Noodle Time, Inc. (collectively “BI”), by and through their undersigned attorneys, hereby stipulate to the dismissal of BI’s Counterclaims in this action pursuant to the following terms:

1. BI previously dismissed its Counterclaims without prejudice as part of a Stipulation of Settlement and Dismissal, dated October 1, 2014 (D.E. 104), and ordered by the Court on October 2, 2014 (Exhibit A hereto). On appeal of this Court’s order granting summary judgment in favor of BI on BOT’s claims, the United States Court of Appeals for the Third Circuit questioned whether it had jurisdiction to decide the appeal since BI’s Counterclaims were dismissed without prejudice. To resolve the appellate jurisdiction issue, BI agrees to dismiss its Counterclaims with prejudice.

2. Notwithstanding BI’s agreement to dismiss its Counterclaims with prejudice, the parties agree that the obligations of BOT set forth in paragraphs 1, 2, and 3 of the Stipulation of Settlement and Dismissal (D.E. 104) and the obligations of BI set forth in the second sentence of

paragraph 4 of the Stipulation of Settlement and Dismissal (D.E. 104) are still binding on the parties and incorporated by reference as if set forth in this Stipulation, and that the Court shall retain jurisdiction to enforce the terms of this Stipulation and the prior Stipulation of Settlement and Dismissal (D.E. 104) in accordance with *Kokkonen v. Guardian Life Ins. Co.*, 511 U.S. 375, 381 (1994) (holding that “if the parties’ obligation to comply with the terms of the settlement agreement [is] part of the order of dismissal—either by separate provision (such as a provision “retaining jurisdiction” over the settlement agreement) or by incorporating the terms of the settlement agreement in the order,” the Court has “ancillary jurisdiction to enforce the agreement”).

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Dated: June 26, 2015


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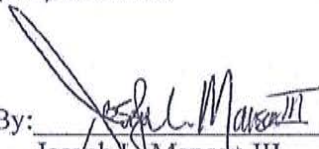
Dated: \_\_\_\_\_

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Dated: June 23, 2015

SO ORDERED:

\_\_\_\_\_  
United States District Judge